

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Environmental Resource Transportation, Inc.
P.O. Box 2138
Garden Grove, California 92842

EPA ID No. CAR000108209

Respondent.

Docket HWCA 2004-0633

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Environmental Resource Transportation, Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1. Respondent is a registered hazardous waste hauler (Registration Number 4373). Respondent transports hazardous waste imported from Mexico to permitted storage, treatment and disposal facilities in the U.S. Respondent leases a storage yard near the Otay Mesa Port of Entry in San Diego County to store hazardous waste for a period of ten days or less in an area zoned industrial by the local planning community.

2. The Department conducted a complaint investigation of a hazardous waste shipment picked up by the Respondent at the U.S. Customs Port of Entry, Otay Mesa facility, on October 9, 2003, and stored at Respondent's leased yard without authorization from the Department.

3. Respondent violated California Health and Safety Code section 25201(a) and California Code of Regulations, title 22, section 66263.18 in that on or

about July 12, 2004, Respondent illegally operated a storage facility by storing hazardous waste for more than ten days in an area zoned industrial by the local planning authority.

4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

5. Jurisdiction exists pursuant to Health and Safety Code section 25187.

6. Respondent waives any right to a hearing in this matter.

7. This Consent Order shall constitute full settlement of the violation alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

8. Respondent admits the violations described above.

SCHEDULE FOR COMPLIANCE

9. All alleged violations have been corrected.

9.1. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Yvonne Sanchez, Chief
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

And

//
//
//
//

Juan M. Jimenez, Chief
Border Unit
Cypress Branch
Statewide Compliance Division

Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

9.2. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

9.3. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

9.4. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

9.5. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order,

Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

9.6. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

9.7. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these

documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

9.8. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

9.9. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

9.10. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

PAYMENTS

10. Respondent shall pay the Department a total of \$17,692.50. Of the total payment due, \$11,692.50 shall be a penalty; \$1,000 shall be for administrative costs and \$5,000 shall be a credit for ERT staff to attend Compliance School. The penalty and administrative costs must be paid within a one year period as follows: On or before 45 days of the effective date of this Order, Respondent shall pay the first

installment in the amount of \$3,000.00. The effective date is the date that DTSC signs the Consent Order. The second installment in the amount of \$6,000.00 is due on or before 180 days after the first installment. The third installment in the amount of \$3,692.50 is due on or before 135 days after the second installment. Respondent's check shall be made payable to Department of Toxic Substances Control, shall include the Docket Number and shall be delivered together with the attached Payment to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent: to:

Yvonne Sanchez, Chief
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

And

Juan Jimenez, Chief
Border Unit
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees. In addition, Respondent agrees to send its employees to Compliance School for hazardous waste management and transportation training. Respondent agrees that

employees will complete the training within 185 days of the effective date of this order. Respondent shall submit a certificate of completion of the training within ten days of the completion of the training. The respondent shall receive a credit of \$5,000 if the Respondent's employees complete the training as required. If Respondent fails to submit the certificate(s) as required, the penalty shall not be reduced. The 185 day period may be extended by the DTSC Branch Chief or his/her designee, upon receiving written request demonstrating good cause.

OTHER PROVISIONS

11.0. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

11.1. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

11.2. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

11.3. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

11.4. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: 3-21-05

/original signed by/
Alex Cabrera, Owner
Environmental Resource Transportation, Inc.

Dated: 3-23-05

/original signed by/
Juan Jimenez, Chief
Border Unit
Statewide Compliance Division
Department of Toxic Substances Control